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May 19, 1954

Opinion No. 54-73

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TO: The Honorable William A. Sullivan  
Arizona State Senator  
P. O. Drawer 391  
Globe, Arizona

RE: Veterans' Tax Exemptions

QUESTION: Must a veteran, presuming he is otherwise eligible for the tax exemption, who has filed his affidavit for exemption prior to April 30, pay real and personal property taxes and the automobile lieu tax on property acquired after April 30 of the same year?

In answer to the above question, it will be necessary to state the basis of the tax exemption granted qualified veterans by virtue of the Constitution of Arizona, Section 2, Article 9 thereof being as follows:

"§2. (Tax Exemption.)--There shall be exempt from taxation all federal, state, county and municipal property. Property of education, charitable and religious associations or institutions not used or held for profit may be exempt from taxation by law. Public debts, as evidenced by the bonds of Arizona, its counties, municipalities, or other subdivisions, shall also be exempt from taxation. There shall be further exempt from taxation the property of widows, honorably discharged soldiers, sailors, United States marines, members of revenue marine service, nurse corps, or of the components of auxiliaries of any thereof, residents of this state; not exceeding the amount of two thousand dollars (\$2,000.00), where the total assessment of such widow and such other persons named herein does not exceed \$5,000.00; provided, that no such exemption shall be made for such persons other than widows unless they shall have served at least sixty (60) days in the

military or naval service of the United States during time of war, and shall have been residents of this state prior to September 1, 1945. All property in the state not exempt under the laws of the United States or under this constitution, or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law. This section shall be self-executing."

The Sections of the Code which provide the procedure whereby a qualified veteran may take advantage of the exemption are as follows:

Section 73-303, A.C.A. 1939, as amended:

"73-303. Affidavit.--A person claiming exemption from taxation under the provisions of section 2, article 9, constitution of Arizona, shall appear before the county assessor and make affidavit as to his eligibility, answering fully all questions appearing on a form provided by the county assessor for such purpose or otherwise propounded, but a person in the military service of the United States and absent from the state, or who is confined in a veterans' hospital or in any licensed hospital may make the required affidavit in the presence of any officer authorized to administer oaths upon a form obtained from the county assessor. Any false statement made or sworn to in such affidavit shall be deemed to be a waiver of exemption of such person. This act shall constitute and be punishable as perjury." (Emphasis supplied)

Section 73-304, A.C.A. 1939, as amended:

"73-304. Proof of exemption.--The assessor may, in his discretion, require additional proof of the facts stated by the affiant before allowing an exemption. Failure upon the part of a person entitled to exemption to make affidavit or furnish evidence as required by this act, between the first Monday in January and the

thirtieth day of April of each year shall be deemed to be a waiver of exemption of such person. This act shall become effective January 1, 1950." (Emphasis supplied)

It can be seen from the underlined portions above quoted, as well as from the context of the sections, that it is essential for the various Tax Assessors to obtain all information in order to determine if the applicant for exemption is eligible therefor. This presupposes knowledge of the property then owned by the applicant, because if the applicant owns in excess of \$5,000.00 assessed property he becomes ineligible for the exemption. The Legislature, by choosing April 30 of each year as the last date on which a veteran may claim exemption, was mindful of the general tax structure of the State of Arizona and the procedure set forth for the various taxing authorities to arrive at the revenue needed for the operation of the various levels of the government for the subsequent year. The Tax Assessor must prepare, and have ready for the County Boards of Supervisors, the assessment roll by the first day of June. For the first ten days of June the Boards of Supervisors sit as Boards of Equalization, before which any taxpayer may appear to protest assessments. Subsequent to this, the budget of the county is adopted and there follows various other procedures. The tax levy for the county is made subject to the approval of the State Tax Commission based upon the budget, being an estimate of expenditures for the fiscal year, and the total taxable wealth of the county. It can be seen from this that it is necessary that a certain date be set for a deadline, after which there can be no further exemptions. Therefore, in answer to your question, an exemption can be claimed only for that property owned prior to April 30 of each year. If a veteran buys property subsequent to that date, then it should be properly included in the claim for exemption of the subsequent year.

It would appear that a person may modify his application for exemption prior to the 30th day of April, if he had previously applied for tax exemption, and subsequent to that acquired real or personal property, if the Assessor would be agreeable to this procedure. As can be seen from Section 73-304, supra, the Assessor is given broad powers.

"The assessor may, in his discretion, require additional proof of the facts stated by the affiant before allowing the exemption."

Therefore, it is the opinion of this office that a veteran may modify his claim for exemption prior to April 30 of each year to cover property purchased after his first application for exemption, presuming that he has already made such application. This only applies to property acquired prior to April 30 of each year.

The Honorable William A. Sullivan  
Arizona State Senator

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It is understood, of course, that there is a certain amount of discretion left with the Assessor and consideration must be given the work load of the respective Assessor's offices. Therefore, an undue amount of changes on an application for exemption would be burdensome, as well as leaving the door open for criticism by the Examiner's office of lax procedure.

The Supreme Court of Arizona, in the case of STATE v. ALLRED, 67 Ariz. 320, 195 P.2d 153, at page 329 thereof, said as follows:

"From our own jurisdiction the case of Gherna v. State, 16 Ariz. 344, 146 P. 494, Ann. Cas. 1916D, 94, presents a good discussion of the power of the legislature to regulate the procedural aspects of a self-executing constitutional provision which is entirely consonant with the interpretation given in Chesney v. Byram, supra. We hold that while the legislature cannot take away the right of exemption, it may, and has, established a reasonable procedure for the voluntary assertion or waiver of the right. We are of the opinion that the very nature of the constitutional exemption provision here in question makes additional legislation both permissible and desirable, as without it the taxing officials would be unable to determine, from year to year, just what property was exempt from taxation, and the veteran would be left in a quandary as to how to avail himself of the right granted him." (Emphasis supplied)

It will be seen from the above quotation that the Supreme Court of Arizona has held that the Legislature may, in detail, prescribe rules and procedures under which an exemption set forth in the Constitution may be claimed. This procedure must be strictly followed. The fact that property is acquired after April 30 does not alter the need that all property owned by the applicant must be known to the Assessor at the time of allowing the exemption; otherwise, there would be no basis for the determination of the exemption. For example, if a person owned real property assessed at the value of \$4,000.00 and subsequent to April 30 acquired an automobile assessed at the value of \$2,000.00, the total property owned by the applicant would be in excess of the \$5,000.00 valuation allowed by the constitutional exemption and the applicant would lose his whole exemption. The exemption from taxation granted to veterans, widows and certain other property owners is analagous to the privilege of voting granted by the State. For example, if a person shows up at the voting polls at 7:00 P.M., he has not been denied his privilege of voting, but, by his own inaction, he has waived the privilege to vote. Likewise, property acquired after April 30 by an otherwise qualified veteran must await the next taxing year before it is eligible for exemption.

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